Supreme Court, U.S.
FILED

CASE NO: 01-16250

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IN THE SUPREME COURT OF THE UNITED STATES

PEPI SCHAFLER

Petitioner

v

RICHARD J. SPEAR

Respondent

On Petition for a Writ of Certiorari
to the Ninth Circuit Court of Appeals

SUPPLEMENTAL APPENDIX

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Filed March 27, 2003

THIS IS NOT FOR PUBLICATION

United States Court of Appeals for the Ninth Circuit.

Pepi Schafler
Appellant

v

Richard Spear
Appellee

Case No: 01-16250
01-16270
01-17516
02 -16695

MEMORANDUM

Appeal from the United States District Court for the Northern District of california, Maxine Chesney , District Court Judge Presiding.

Submitted March 13, 2003. This panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App p 34 (a)(2) Before: Rymer, Kleinfeld , and Paez.

Schafler appeals the district court decision upholding summary judgment granted against her and in favor of the trustee, by the United States bankruptcy court of the Northern District of California. We review the grant of summary judgment de novo. In re Stanton, 3203 F 3rd 939, 941 (9th Cir 2002) . Schafler also appeals a decision of the Bankruptcy Appellate Panel, affirming the bankruptcy court's order denying Schafler's claim for an administrative expense claim, for abuse of discretion. In Re Hanna, 168 , B.R. 386, (9th Cir BAP 1994). Assets held by the Max Family Living Trust as of March 26, 1996 were properly determined by the bankruptcy court to be property of the bankruptcy estate. All property held by a debtor at the commencement of a chapter 7 proceeding is part of the bankruptcy estate unless it is excluded by 11 USC # 541 (b) The record indicates that Appellant had access to both the net income and the principal of the trust and used the assets of the trust to her benefit. Thus the trust was not subject to exclusion from the bankruptcy estate. The assets that remained in the trust at the closure of appellant's case on July 5, 1996, were not technically abandoned to the Appellant as a result of their not having been administered by the trustee.

DD2 pg 2

11 USC $554 permits abandonment of property scheduled under section #521 (1) of this title . Appellant did not properly schedule the assets in question , although she did list the existence of the trust on her chapter 7 petition, she omitted her interest in the trust and listed it's value as only one dollar. *This does not constitute proper scheduling of the assets sufficient to permit a technical abandonment upon closure of the case. Nor did the disclosure on the bankruptcy schedule provide the trustee with constructive notice of the assets of the trust. The District court properly held that the trustee's duty to administer assets of the bankruptcy estate does not extend so far as to require the trustee to uncover assets intentionally concealed by the debtor . Even were we to hold otherwise , the bankruptcy court would be within it's discretion to revoke the technical abandonment in a situation such as this , where the trustee was given false information about an asset or the assets were not listed at all. See Cusano v Klein 264 F3rd ; 936 (9th Cir 2001), In re DeVore 223 B.R. 193 (9th Cir BAP 1998). Next Appellant challenges the bankruptcy court's denial of the administrative expense claim she submitted to recover some $43:000 in expenses incurred regarding the Florida condominium apartment. She argues that the administrative expense claim should have been approved , and that the bankruptcy judge violated her due process rights by "prejudging" the issue, and by failing to hold a separate hearing. Under 11 USC # 503 (b) (1)(A) an administrative expense claim can be submitted to recover "the actual necessary costs and expenses of preserving the estate."In Re Dak Industries Inc. 66 F3rd 1091 , 1094 (9th Cir 1995) In order to make out a valid administrative expense claim , a claimant must show among other things that the expense "directly and substantially benefited the estate". Here the bankruptcy court did not abuse it's discretion in determining that the money spent by Appellant in maintaining a condominium that she was concealing from the estate for her personal benefit did not directly and substantially benefit the estate. Meanwhile , Appellant's challenge to the bankruptcy judges alleged prejudgment of the administrative expense claim lacks merit because she has not overcome the presumption of honesty and integrity on the part of the decision maker. **Affirmed.**

ERRATA: In the corpus of the petition for the writ of certiorari there is an error : it now reads: "the 50 word decision by the Court of Appeals. It should read the 350 word decision

*The Court misstated and therefore most likely misread what it actually states on the petition: It does not state that the value of the trust is one dollar. It states petitioner's interest as one dollar. See Appendix 1.

DD2, pg 3

Schafler appeals the decision of the District Court upholding the bankruptcy court's denial of her claim that some of her assets comprise an individual retirement account and should be exempt from the bankruptcy estate. We review de novo the question of whether Schafler is entitled to an exemption. Coughlin v Cataldo (In re Cataldo) 234 B.R. 426, (9th Cir BAP) with the exception of findings by the bankruptcy court that Schafler acted in bad faith which we review for clear error. Arnold v Gill (In re Arnold) 252 B.R. 778 (9th Cir BAP 2000). Schafler does not establish that the asset in question (1) qualifies as an exempt account under Section 11-504 (h) of the Courts andJ Judicial Proceedings Article of the code of Maryland. This statute requires that the account meet the requirements of "401(a), #403 (a) #403(b) , #408 , #408A, #44149d) or #414(c) of the United States Internal revenue Code of 1986, as amended or #409 as in effect prior to January 1984) of the United States Internal Revenue Code of 1954 as amended ". Schafler does not argue (2) and the record does not indicate , that the account for which she claims an exemption satisfies these requirements (3) The exemption was properly denied. The bankruptcy court's denial of Schafler's motion for an exemption did not deny her due process of law simply because it did not occur at a separately scheduled hearing.(4)The bankruptcy court chose to address the matter (5) during a hearing on a related matter (6) , after both parties had fully briefed the exemption issue , and gave both parties an opportunity to present oral argument. (7) Schafler argues that this was done in violation of Northern District of California local bankruptcy rule 9014, but does not demonstrate any prejudice that resulted. (8) Absent a demonstration of prejudice , any error in this respect is not reversible error. Houston v Bryan 725 F 2nd 516 , 518 (9th Cir 1984). **The decision is affirmed.**

1) She did and continues to do so.
(2) Schafler was denied the opportunity to argue. A review of the transcript would show that judge Newsome of the bankruptcy court who represents the opponent did not let anyone speak.
(3) Yes it does meet the requirements ; the evidence is overwhelming
(4) The core and mainstay of procedural due process is notice and a hearing.
(5) A court is supposed to guarantee due process , not intentionally violate that right.
(6) The related matter is that judge Newsome had promised opponents Schafler's assets . as fees. On that date of April 25, 2001 Newsome ordered all of petitioners IRA sold and the proceeds awarded to the cronies as fees. if petitioner receives her IRA exemption, that the bounty hunting cronies will not receive the IRA as "interim bounty hunting rewards' There will be no money to steal on the cronies behalf.
(7) Petitioner's counsel argued vigorously that deciding without notice and a full evidentiary hearing violates the rules, and due process, and counsel also argued he was not prepared but judge Newsome was abusive, sarcastic, ignored counsel. and said he is prepared. He was prepared to give petitioner's IRA to the cronies on whose behalf he argued and did so.
(8) This is an odd holding by the Court of Appeals , essentially saying even following due process requirements, this was already prejudged, and must stay that way.

DD6, pg1 IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

Judge Maxine Chesney Presiding

Filed June 12 .2001

Order denying Debtor's Motion to Dismiss Trustee's Appeal, Affirming Judgment of Bankruptcy Court

RICHARD J. SPEAR trustee
Plaintiff and Appellee

v

PEPI SCHAFLER
Defendant and Appellant

Before the Court are two related bankruptcy appeals filed , respectively by Pepi Schafler (debtor) and By Richard Spear (trustee)Debtor appeals the judgment entered on an order granting summary judgment in favor of trustee, and trustee appeals the order granting debtor's motion to extend time to file a notice of appeal from that judgment. Also before the court is debtor's motion to dismiss trustee's appeal ,and debtor's renewed motion for a stay pending appeal. Having reviewed the briefs fil;ed in connection with both appeals , as well as the papers submitted in support and in opposition to the motions , the court deems all maters suitable for decision without oral argument. Accordingly debtor's requests for oral argument are hereby denied ,and the July 6, 2001 hearing on debtor's motion to dismiss trustee's appeal is hereby vacated.

Background*

On March 26 . 1996 debtor filed a petition for relief pursuant to chapter 7 of the bankruptcy code. Debtor attached to the petition schedule B-personal property, and listed the following asset: trustee of trust the beneficiaries of whom are debtor's adult children. **Debtor also

* although the Court alleges to have culled the information from the record on appeal the Court has created incoherent mess and a construct of distorted facts and dates that do not at all correspond to the documents and the timeline. The Court also does not take notice, that the petition was filed in another jurisdiction 3000 miles away.

** the Court is acknowledging that the "trust was scheduled" which is accurate and gratifying , since judge Newsome of the Oakland bankruptcy court has insisted otherwise. that he asserted legitimized his frequently repeated plan to take away by force petitioner's assets and give them to his cronies Dennis Davis and Richard Spear. He did do in the end.

attached to the petition a statement of financial affairs, in which she stated that she had not transferred any property within one year immediately preceding the commencement of this case. In her petition , debtor declared under penalty of perjury that the information was true and correct. On July 5, 1996 the bankruptcy court entered a discharge order. A final decree was entered on July 9, 1996 and the case was closed. On April 28, 1998 *trustee moved to reopen the case for the purposes of allowing trustee to investigate and pursue recovery of potential bankruptcy estate assets which may have been undisclosed. On May 7 1998, ** the bankruptcy court granted the motion. On May 5 1999,*** trustee instituted an adversary proceeding by filing a complaint in the reopened bankruptcy case. On November 3, 1999 trustee filed an amended complaint ****The first amended complaint sought inter alia a declaration that certain assets specifically stock certificates and a condominium apartment held by the above referenced trust (Max Family Trust) were the assets of the bankruptcy estate.****. Trustee alleged that the max family trust was a sham *****, that debtor had transferred her assets for no consideration in to the trust before filing for bankruptcy and that debtor thereafter used the assets of the trust as her own property .On November 3, 2000 debtor filed a motion for summary judgment . Debtor argued inter alia that trustee 's cause of action for declaratory lacked merit because the bankruptcy estate had irrevocably abandoned such assets to her when the case was closed in 1996. On December 4, 2000 , trustee filed opposition and a cross-motion for summary judgment . With respect to trustee's declaratory relief cause of action . he argued that debtor in 1996, fraudulently concealed her interest in the stock certificate and condominium, ******and therefore such assets

* trustee , an attorney member of the DC bar did not move on his own , but on the promise of a bribe by a scorned angry former husband who was seeking to harass. See appendix.

** that was by the court in Greenbelt, Maryland.

*** the Court in it's fact pattern omitted one year of events, and this motion was ex part filed in the bankruptcy court in Oakland California.

**** judge Newsome of the Oakland bankruptcy court had promised Davis and the phantom trustee petitioner's assets; he said so the first time petitioner had the misfortune to be in his presence, frequently repeated it thereafter, and the last time he repetaed it that he said so the firts time. The bounty hunters were ready to collect on their promised bounty. This is what it was about.

***** The Max Family Trust was created in **April 1986.**

******Most of the stock certificates representing petitioner's IRA, and the apartment which had little equity in it, were and are exempt under maryland law.

DD6. pg3

were never properly scheduled. Trustee argues that under such circumstances, no technical abandonment occurred., and the property remained the assets of the estate. At the hearing *held December 18, 2000 the bankruptcy court made , inter alia, the following finding: (1) There was no issue of genuine material fact that the Max Family Trust was nothing but a sham and a fraud on the debtor's creditors**, because the assets of the trust were always treated by debtor as her personal property , and the (2) the assets were not technically abandoned, to the debtor upon closure of the case because, debtor failed to disclose in her schedules the true value of her interest in the trust which was one hundred percent of over five hundred thousand dollars in stocks and the Florida apartment. Instead she listed her interest as being worth one dollar. The bankruptcy court granted summary judgment in favor of trustee on the declaratory relief cause of action. On December 21, 2000 the bankruptcy court filed it's judgment after cross motion for summary judgment , whereby judgment was entered in favor of trustee, on his claim for declaratory relief, and the following properties were declared the property of the bankruptcy estate: 91) all stocks and bonds held by trustee that had been turned over to him by Schafler, all stocks and bonds owned by the trust as of march 26, 1996, and the proceeds of same, (3) a Florida condominium apartment, more fully described in an exhibit to the judgment . all other property held by the debtor in the name of the trust as of March 26, 1996 and it's proceeds. On January 16, 2001 debtor's counsel*** filed a motion to extend time to file a notice of appeal pursuant to rule 8002 (c)(2). On January 17, 2001 the bankruptcy court held a hearing on this motion to extend, and it was granted. The bankruptcy court ordered counsel for debtor to pay $1.000 to counsel for trustee to compensate him for the costs incurred in opposing the motion . After the hearing the bankruptcy court filed it's order to extend time to file notice of appeal. On January 17, 2001 debtor filed a notice of appeal from the judgment . On January 24, 2001 , trustee filed a notice of appeal from the order extending time to file notice of appeal.

* it is called a "hearing" for unknown reasons, possibly to deceive. In reality Newsome (judge) makes all decisions by himself, most likely with his favorites, and comes to work just to read them. he represents his cronies, does not allow others to be heard.

** what a deceptive, mendacious, fraudulent , shameful statement this is coming from the ignoble judge Newsome.! because he is so concerned about the creditors, he awarded all of petitioners assets -one third of a million dollars mostly to Davis and some to Spear, as fees! What a crook!

*** Without going into too much detail the ignoble Davis did not provide- the judgment order until time to file a notice of appeal had passed. Petitioner attempted to make counsel aware that Davis and Spear are unethical and corrupt individuals, and totally untrustworthy.

DISCUSSION

A. Trustee's appeal: 1. Debtor's motions to dismiss.

Debtor argues that trustee's appeal should be dismissed on the ground counsel for him accepted from debtor's counsel $1.000 which the court ordered to be paid as a sanction. Debtor's counsel contends that by accepting the $1.000 payment trustee accepted the benefits of the order from which he appeals manifesting an intention to bring the matter to a definite conclusion. When a party accepts the benefits of a judgment under circumstances which indicate an intention to finally compromise and settle a disputed claim, an appeal may be foreclosed. Hawaiian Paradise Park Corp v Friendly Broadcasting Corp.414 F 2nd 750, (9th Cir 1969)." in such a case , it is the mutual manifestation of an intention to bring the litigation to a definite conclusion upon a basis acceptable to all parties which bars a subsequent appeal, and not the fact, standing alone, that benefits under the judgment were accepted. Additionally , the general rule is subject to an exception where the court has adjudicated separable or divisible controversies , in which the appealing party may accept the benefits of a divisible portion of an order and appeal the adverse portion thereof . See Fidelcor Mortgage Corp. v Insurance Co of North America, 820 F 2nd 387 (11th Cir 1967).At the January 17, 2001 hearing , it was debtor's counsel who suggested that it might be appropriate for the bankruptcy court to order him to pay the expenses incurred in opposing debtor's motion ; at no time did trustee* or counsel for trustee, request such a sanction or award of costs . At that hearing , after the court granted debtor's motion for an extension of time, and denied her motion for a stay pending appeal , the court ordered counsel to pay counsel for the trustee $1.000, the stated reason being that trustee's counsel had to file opposition on very short time. Schafler's counsel argues that under such circumstances , payment of the sanctions award was a condition of granting the motion extending the time to file a notice of appeal, and that Davis's acceptance of the $1.000 was a manifestation of his intent to terminate the matter. A review of the record , however clearly indicates that the court neither conditioned it's grant of an extension on payment of the sanction, nor intended that the trustee receive any benefit from this award. At a hearing subsequent to filing the notice of appeal, the court ruled that the $1.000 sanction was not property of the estate, but rather a sanction separate and apart, and that the $1.000 had been awarded to counsel for the trustee, and not the trustee. Because trustee received no benefit from the January 17, 2001

* the trustee is a figurehead , someone whose name , because of "insider connections" is placed on thousands cases which he "farms out" to other lawyers who pay him kickbacks and he collects the statutory trustee fee. he does not know what is going on, no participation.

order granting debtor's motion to extend time to file an appeal, debtor cannot establish the applicability of the rule set forth in Hawaiian paradise Park,. Moreover , the bankruptcy court's ruling , as set forth above can only be interpreted to mean that the question of whether she established entitlement to an extension of time was completely divisible from the question of whether counsel for trustee was entitled to an award of sanctions See Fidelcor Mortgage Corp. 820 F 2nd at 370 (11th Cir 1987). (where court adjudicates divisible controversies in one order, appealing party may appeal adverse portion). Accordingly debtor's motion to dismiss trustee's appeal is hereby denied.

2. Merits a. Standard of review.

An order granting an extension of time to file a notice of appeal is reviewed for abuse of discretion . See Marx v Loral Corp 87 F3rd 1049, (9th Cir. 1996) "A court abuses it's discretion when it bases it's decision on an erroneous conclusion of law or when the record contains no evidence on which it could rationally base its decision". United States v. Prairie Pharmacy Inc. 921 F 2nd 21199th Cir. 1990)

b. Discussion.

A notice of appeal from a judgment , order , or decree entered by a bankruptcy court shall be filed within ten days of the entry thereof. See Rule 8002 (a). The bankruptcy court however has discretion to extend the time for filing a notice of appeal upon a showing of excusable neglect. See Rule 8002(c). The determination of whether excusable neglect exists is an equitable one, depending upon all the relevant circumstances , including "the danger of prejudice to the non-movant , the length of the delay and its potential impact on judicial proceedings , the reasons for the delay, and whether it was in the reasonable control of the movant, and whether the movant acted in good faith." See Pioneer Inv. Servs. Co v Brunswick Assocs. Ltd Partnership ,507 U.S. 380, 395, (1993): Reynolds v Wagner , 55 F 3rd 1426 (9th Cir 1995) (holding Pioneer standard applies to motion for extension of time to file appeal).Prior to Pioneer , in the Ninth Circuit , where a party sought an extension of time to file an appeal, the standard for determining excusable neglect was " a strict one.", and an extension of time was available only in extraordinary cases where injustice would otherwise result. " See Alaska Limestone Corp v Hodel, 799 F 2nd 1409 (9th Cir 1986) (citations omitted). In light of Pioneer, however the Ninth Circuit has recognized that excusable neglect can cover cases of negligence carelessness and inadvertent mistake. See Briones v Rivera v Riviera Hotel & Casino,116 F3rd 379 (9th Cir 1997)

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Here, as the Judgment was entered on December 21, 2000 a timely notice of appeal* would have been filed no later than January 2, 2001. Debtor , through counsel first received a copy of the judgment on January 10, 2001 when such copy was provided to Schafler by trustee. Debtor filed her motion for an extension of time three court days therefater. In support of debtor's motion for an extension of time , debtor's counsel submitted a declaration providing the following reasons for counsel's failure to timely file her notice of appeal: (1) on December 19, 2000, counsel for trustee sent counsel for debtor a copy of a proposed judgment which had been submitted tot he bankruptcy court, but debtor did not receive thereafter a copy of a filed judgment as required by Rule 9022-1 of the bankruptcy local rules •• (2) counsel was aware that, pursuant to rule 9021-1(c0 of the bankruptcy local rules , submitted orders not approved as to form are ordinarily lodged with the bankruptcy court , and then held by the court for 7 days ***. (3) although counsel was present on December 18, 2000 when the bankruptcy court rules on the parties' motions for summary judgment counsel did not consider it unusual that he had not received an order by early January due to the holiday season, (4) because the bankruptcy court had read a lengthy pronouncement of it's findings at the December 18, 2000 hearing, counsel believed that the court might also be preparing it's own order, and (5) counsel did not have a subscription to the Pacer system***

* all this information is culled from the opponent's submission

the following are footnotes by the court;

** B.L.R. 9022-1(a) provides that 'the party submitting a form of order or judgment in contested matters and adversary proceedings shall submit: (1) An original and one copy of a list of the names and addresses of the submitting and contesting parties , and the United States Trustee: (2) Sufficient copies of the order or judgment for the submitting party, each contesting party , and the United States trustee; and (3) two stamped envelopes addressed to the submitting party and one stamped envelope addressed to each contesting party , and the United states trustee. B.L.R. 9022-1(c0 provides that "once the order or judgment is signed , a conformed copy will be mailed to the submitted party," by the Clerk , who will note the date of the entry on the conformed copies and serve them by mail on the parties named on the list referred to in paragraph (a)(1)"

*** The proposed Judgment submitted by counsel for trustee, and thereafter signed by the bankruptcy court ,was not approved as to form by counsel for debtor or by debtor.

****PACER is an electronic system by which parties can access the docket sheets for court actions. See In re Lawrence, 244 B.R. 868 , 876 (S.D. Fla 2000).

At the hearing on the motion to extend time, counsel for debtor further explained that he did not file a notice of appeal prior to entry of judgment , as allowed by rule 8002(a) * because he substituted in the action after the December 18, 2000 decision and needed to familiarize himself with the record before determining if an appeal would have any arguable merit. Counsel also explained that he was counting on the time it would take for a judgment to be entered to conduct such an evaluation. On appeal trustee argues that because debtor's counsel neither checked the docket to determine the date of entry of the judgment , nor filed a notice of appeal pursuant to rule 8002(a) prior to entry of the judgment , the bankruptcy court abused it's discretion by granting debtor's motion. As trustee acknowledges , it's argument is directed solely toward the one Pioneer factor concerning the reason for the delay. Trustee does not argue that any of the other Pioneer factors weigh against a finding of excusable neglect . The bankruptcy court , however , was obligated to "examine all of the circumstances involved rather than holding that any single circumstance in isolation compelled a particular result regardless of the other factors". See Briones 116 F 3rd at 382 n. 2. As noted trustee focuses on only one circumstance , the reason for the delay. In that regard , debtor's explanation is weak; counsel could have checked the docket to determine if, and when, a judgment had been entered or could have filed a notice of appeal pursuant to rule 8002(a) . Although such conduct may show a lack of regard for the court's docket , in absence of any evidence of deviousness or willfulness or of prejudice to debtor's ability to defend the judgment on appeal , and in light of the very short period of delay , the bankruptcy court did not abuse it's discretion in determining that debtor was entitled to relief pursuant to rule 8002(c) ** Accordingly , the bankruptcy court's order extending time for debtor to file a notice of appeal from the judgment is hereby affirmed.

B. Debtor's appeal. 1. Standard of review.

An order granting summary judgment is reviewed de novo. See in Re: Lewis , 97 F 3rd 1182 , 1185 (9th Cir 1996) " The reviewing court will affirm a grant of summary judgment only if it appears from the

* Rule 8002(a) provides that a "notice of appeal filed after the announcement of a n order or decision but before entry of judgment , order or decree shall be treated as filed after such entry and on the day thereof.

** trustee's reliance on In Re Cahn , 188 B.R. 627 (BAP 9th Cir 1995) is misplaced. There the party who requested an extension received a copy of the appealable order four days before the deadline for filing timely notice of appeal. Here in contrast , debtor did not receive a copy of the judgment until after the deadline to file a timely appeal had passed.

after viewing all evidence and factual inferences in the light most favorable to the nonmoving party, that there are no genuine issues of material fact and that the moving party *is entitled to judgment as a matter of law." In re Yarbrow, 150 B.R. 233 (BAP 9th Cir. 1993)

2. Discussion

Pursuant to 11 USC # 554 (c) "unless the court orders otherwise , any property scheduled under section 521 (1) of this title ** but not otherwise administered at the time of closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title." Such abandonment is termed a "technical abandonment" see in Re Menk,241 B.R. 896, (BAP 9th Cir 1999). Although the general rule is that a technical abandonment is irrevocable , the first clause of #554 (c) provides bankruptcy courts with "discretion to affect or prevent technical abandonment simply by ordering otherwise. "See in Re DeVore 223 B.R. 193 (BAP 9th Cir 1998). "The statute does not limit such an order to the period prior to case closure , (citation omitted), and courts have set aside technical abandonments in appropriate circumstances. "See id (citing in re Shelton 201 B.R. 147 (Bankr. E.D Va. 1996)."Unless the court orders otherwise , property of the estate that is not abandoned under 554 and not administered in the case remains property of the estate. "11 USC #554 (d) As noted, debtor appeals the bankruptcy court's order declaring that certain stocks and bonds , the proceeds thereof, a Florida condominium apartment, and any other property held in the name of the max family trust as of March 26, 1996 and the proceeds thereof are property of the bankruptcy estate. Debtor , in sworn declarations filed with the bankruptcy court, declared that the extent of her interest in the trust was $1.00 and that she had not transferred any property within one year of March 26, 2001***When debtor filed her petition for bankruptcy , the trust held brokerage accounts valued at approximately **** $296.000 The trust also held title to the Florida condominium apartment which debtor had transferred from her name to that of the trust for no consideration three months prior to filing for bankruptcy. ***** Debtor retained the right to revoke amend , alter or modify the trust agreement governing the trust.

* the court failed to clarify who is the moving party. Petitioner moved for summary judgment to get away from a biased abusive predatory court, and opponent cross moved. Aren't both parties the moving parties?

**the max family trust was scheduled. in the introduction to this opinion the court said the max family trust was scheduled. (dd 6 pg 1)

*** petitioner signed nothing on March 26, 2001 under oath or otherwise. the court is in error.

**** this money was petitioner's IRA exempt under Maryland law, subject to this petition.

***** Since the trust was scheduled, transferring the apartment was a non event. judge Newsome of the Oakland bankruptcy court said on the first encounter to petitioner that he would give her assets to Spear and Davis, aso all he needed was an attempt to legitimize it.

DD6 pg 9

The bankruptcy court after reviewing the evidence submitted, found that no triable issue of fact existed as to whether debtor's statements about the extent of her interest in the max family trust and her denial that she made transfers* in the one year period prior to the filing of the bankruptcy petition were false**, or that debtor's false statements were made for the purpose of concealing assets.*** Accordingly, the court concluded that trustee was entitled to summary judgment on his claim for declaratory relief. On appeal , debtor argues that the bankruptcy court erred **** in granting summary judgment because trustee failed to show there was no triable issue of fact as to whether debtor's disclosures were sufficient to provide trustee with "constructive notice" of her interest in the assets in question. *****Debtor contends that she should not have to "bear responsibility for the failure of the trustee to administer the case and the trust assets before he asked the bankruptcy court to close the case. " ****** Debtor relies heavily on In Re Atkinson 62 B.R. 678 (D Nev 1986) . In that action debtors scheduled a pending lawsuit as an asset by listing the name of the court case, the name of the court in which the action was pending and by stating that the value was unknown to the debtors. After the bankruptcy case was closed , certain creditors moved to reopen on the ground that sufficient reason existed for the court to revoke the trustees technical abandonment of

* the court has made numerous schizophrenic like statements about petitioner's integrity and the facts, which are not acceptable. The trust was scheduled as the court said, Appendix 1- and it is indicated to be in petitioner's possession, and why counsel listed the interest as $1 is not known but not relevant. the trustee, an attorney member of the DC bar under oath represented to the court that he had done a 'through diligent investigation(pg 24 appendix) This double standard is unacceptable. while it is evident that Judge Chesney wanted to affirm judge Newsome of the bankruptcy court, but spewing inaccurate insults is not acceptable either. The transfer of the apartment that appears to be the mainstay of this opinion , was to an entity that was scheduled.

** the statements were not false

*** the trust was scheduled. how would petitioner have known in advance that the former trustee would abandon the asset. what a ridiculous attempt by the court to make excuses for the former trustee and vilify petitioner. judge Newsome of the bankruptcy court had said immediately after the case was transferred that her assets would be given to Spear and Davis, not creditors but his cronies. What could be done about it?

**** There had never been an evidentiary hearing in this matter. Newsome decided the issues in house or wherever, and came to work to read them.

***** the former trustee had constructive notice. When he sought reopening of the closed and discharged case, see appendix , he did not tell the court that assets were not properly scheduled. He told the court in seeking reopening about about additional assets.

******Plaintiff's counsel was correct that the court blamed petitioner for the trustee's failures. But they are 'insiders" petitioner is not.

the asset. The creditors argued that the debtors reference to the lawsuit was "cryptic" and so " inadequate a disclosure as to cause the trustee to fail to properly administer the asset" The court in Atkinson framing the issue as "whether the lawsuit was properly scheduled and considered by the trustee" held that debtor's reference to the lawsuit on their schedules and statements was not "cryptic" nor an effort to conceal it's existence from the trustee. Rather according to the court , debtors had provided the trustee with sufficient information to allow the trustee to examine the debtors about the lawsuit, and to review the pleadings and records on file in the court where the lawsuit was pending prior to making an "informed decision" about abandoning the asset. * Notably , none of the information provided by the debtors in Atkinson was false** as is the case here. debtor fails to explain how her false statement that her interest in the max family trust was $1 *** and that she had not transferred any property from her name to the trust within the within the prior year was sufficient to give trustee constructive notice **** that the trust in actuality held assets worth hundreds of thousands of dollars. ***** Debtor cites no case in which any court has held that an assets was properly scheduled when false ****** information about the nature and value if the assets was provided. Cf id. at 679 (holding "properly scheduled" asset considered and abandoned by trustee is irrevocably abandoned to debtor. As indicated in the Court's February 20 , 2001 order denying appellant's motion for stay pending appeal, "no case has held that revocation ******* is inappropriate where a debtor has wrongfully concealed assets or the nature of her interest therein.

* Judge Chesney herself had said that the trust was scheduled. The former trustee, who has been a private trustee for 10 years, who is an attorney , member of the DC bar knew more about inquiries into assets than petitioner. More of judge Chesney schizophrenic comments vindicating someone responsible, while abusing the one with the least knowledge.

** none of the information provided was false; the trustee had the chance and choice to inquire. One may wish that judge Chesney would be more cautious in her words. It is evident she wants to affirm her own-judge Newsome, but she should not be insulting.

*** did anyone prevent the former private trustee, an attorney from inquiring? Do these private trustees have a duty to work, or just line their pockets?

****for the twentieth time the apartment was transferred into an entity that was scheduled.

***** Most of those assets which were petitioner's IRA were exempt under Maryland law as was the apartment: an interest in a homestead is exempt up to a certain amount. It is also exempt in California.

****** There was no false information provided. There are numerous cases holding that even not scheduling an asset at all is not necessarily and intent to defraud. To expect petitioner to know more than the attorneys preparing the petition or those that are trustees is the height of judicial abuse. The trustees only seek to line their pockets.

******* **Revocation of what? petitioner had sought the revocation of her discharge and dismissal of the chapter 7 petition, but the court ignored it, because judge Newsome of the bankruptcy court had promised petitioner's assets to his cronies. There is no reported case in which a corrupt bankruptcy judge seized the assets of a former debtor, and hands them over to his cronies. That is the issue in the present case.**

DD 6, pg 11

Indeed , bankruptcy courts have recognized that one of the "universal exceptions to the finality of abandonment of an asset" is where "the trustee is given incomplete or false information of the asset by the debtor" *See In re Ozer , 208 B.R. 630 (Bankr. E.D. NY 1997). The reasoning behind this "universal exception" is that the "abandonment could not have been knowing and intentional if the above flaws existed". As stated by one bankruptcy court, the "bankruptcy code does not deprive creditors of the right to share in the debtor's property merely because the trustee failed to find the property **or failed to take possession of it for creditors" See in re Harris, 32 B.R. 125 (Bankr. S.D. Fla 1983). Rather the bankruptcy code deprives the creditors of the right to share in the debtor's property only ***if that property was formally abandoned by the court after a hearing or if the property was explicitly identified in the debtor's bankruptcy schedules and ****was never administered by the trustee during the pendency of the case . See id. Here no triable issue of fact exists as to whether debtor provided incomplete and false information about her assets on her bankruptcy schedules and statements There is no evidence to support a finding that the "universal *****exception to the finality of abandonment of an asset " should not be applied. Further , debtor has provided no authority for the proposition that her false statements can be excused on the ground that the trustee****** did not learn of the falsity of the statements prior to the closing of the case . Consequently , debtor has failed to establish that the bankruptcy court erred by not finding there was a triable issue as to whether the trustee was on constructive notice.*******

*the trustee signed a statement under oath that he had thoroughly investigated this matter. He has been a private trustee for 10 years, is an attorney member of the DC bar, isn't he expected to know more that an individual filer?

** this reopening and rapacious plunder of petitioner's assets was not on behalf of creditors but to line the pockets of the trustees. Every penny of the assets stolen from petitioner were given by the Oakland bankruptcy court judge Newsome to his cronies: the "phantom trustee" and his attorney as "fees "He is nothing but a corrupt predator and thief.

*** the creditors never came forward after discharge. this was not reopened on behalf of creditors

**** the property was explicitly identified Judge Chesney said so. on another page.

***** universal is a pompous term: is it applicable in Germany? in Indonesia?

****** This is about the trustees lining their pockets. Otherwise who needs these crooks?

******* Substantive due process rights demand that where a property interest is at stake, that it be triable issue.

DD 6 , pg 12

Finally , debtor argues that the bankruptcy court erred by failing to consider the length of time btween the closing and reopening of the case . See in re Adair , 253 B.R. 85, 89 (BAP 9th Cir 2000) (holding in considering a motion to revoke abandonment of an asset , it is appropriate to consider the length of time between closure of the case and request to reopen). The bankruptcy court , in it's recitation of the facts, stated the dates of the closure and reopening , thus establishing that it was aware that twenty two month *had elapsed between the closure and reopening. The bankruptcy court also was aware that the former trustee moved to reopen the case after he was "alerted to the debtor's concealment of assets by her ex spouse. **. Nothing in the record indicates that the trustee delayed moving to reopen once he became aware of the need to investigate the existence of concealed assets. Accordingly the bankruptcy court did not err in granting summary judgment in favor of trustee on his claim for declaratory relief.*** The debtors renewed motion for a stay pending appeal filed may 10, 2001 is hereby denied as moot.

Conclusion

For the reasons stated above,

1. the motion to dismiss trutsees appeal is denied ,

2, the bankruptcy court's order granting debtor's motion for an extention to file a notcie of appeal is hereby affirmed,

3. the judgment of the bankruptcy court is affirmed.

It is so ordered

ss/ Maxine M. Chesney
United States District Judge.

*. Actually the seizure of petitioner's assets , and the subject of this order took place four and one half years after the petition was filed. the twenty two months is only partially true. The facts that its was really fifty four months.

** He was promised a bribe to reopen and harass petitioner.

*** the bankruptcy court -judge Newsome paid of his cronies with petitioner's assets.